

(S E R V E D)
(AUGUST 16, 2013)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 13-03

SEAGULL MARITIME AGENCIES PRIVATE LTD.

v.

**GREY AUTOMOTIVE, INC., CENTRUS AUTOMOTIVE DISTRIBUTORS INC.
AND SHAO LIU, INDIVIDUALLY**

BY THE COMMISSION: Mario CORDERO, *Chairman*, Richard A. LIDINSKY, Jr., Rebecca F. DYE, William P. DOYLE, *Commissioners*; and Michael A. KHOURI, *Commissioner*, dissenting.

ORDER TO SUPPLEMENT THE RECORD

This matter is before the Federal Maritime Commission (Commission or FMC) on a Notice of Commission Determination to Review pursuant to 46 CFR § 502.227. The Complainant, Seagull Maritime Agencies Private Ltd., filed a Notice of Voluntary Dismissal with prejudice, signed and stipulated to by both parties pursuant to 46 CFR § 502.72(a)(1). Thereafter, the Secretary issued the Notice of Voluntary Dismissal. The Commission has, however, received information that suggests the voluntary dismissal is based on a settlement agreement entered into by the parties. No settlement agreement was submitted to the Administrative Law Judge (ALJ) for approval prior to the dismissal.

Settlement is strongly encouraged in administrative proceedings and is embodied in the Administrative Procedure Act (APA) and in the Commission's precedent and rules. *Behring International, Inc.*, 20 S.R.R. 1025, 1032-1033 (ALJ 1981); *Pennsylvania Gas & Water Co. v. Federal Power Comm'n*, 463 F.2d 1242, 1247 (D.C. Cir. 1972)). The Commission favors settlements that "result in a savings of time for the parties, the lawyers, and the courts and it is thus advantageous to judicial administration." *Old Ben Coal Co. v. Sea-Land Serv., Inc. (Old Ben Coal)*, 18 S.R.R. 1085, 1092 (1978). The Commission has a long-standing history of reviewing settlement agreements to assure that they accord with law and public policy. *Id*; see also *Ellenville Handle Works v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (1981).

Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR § 502.72, recently revised and effective as of November 12, 2012, expressly authorizes voluntary dismissals by a complainant. In response to a comment requesting that the Commission dispense with review of settlement agreements, the Commission stated in the supplementary information to the Final Rule that it "did not intend to eliminate the requirement for review of settlement when it proposed the new rule and is not changing its long-standing policy at this time." Docket No. 11-05, Rules of Practice and Procedure, *Final Rule*, 77 FR 61519 (Oct. 10, 2012).

Accordingly, the parties are hereby instructed to file a copy of the settlement agreement, if any, with the ALJ on or before August 23, 2013. If the parties did not enter into a settlement agreement in this proceeding, the parties are instructed to so indicate. The ALJ is hereby ordered to issue an Initial Decision on or before September 23, 2013.

By the Commission.

A handwritten signature in blue ink, appearing to read 'Rachel E. Dickon', with a stylized, cursive flourish at the end.

Rachel E. Dickon
Assistant Secretary

Commissioner KHOURI dissenting:

I disapprove the recommendation with the following provision and comment.

In private complaint proceedings before the Commission where both parties are represented by counsel, I see no reason for the Commission to insert itself into a position of approving or disapproving a voluntary settlement.

In matters where the Commission, through the Bureau of Enforcement, or in private proceedings where one party is *pro se*, then some involvement by the ALJ and the Commission might be in order.

With limited Commission resources, personnel and budget, I do not believe we should require the Office of Administrative Law Judges, the Office of General Counsel, the Office of the Secretary and the Commission Members and their Counsel to devote their time to such matters.